

# Introduction

## Overview

Victims of sexual assault have special and serious needs that must be met promptly, sensitively, and with expertise. The experience of a sexual assault can leave an individual psychologically traumatized and physically injured. Often, the effects remain for months and years. The initial response of a health care provider to a patient reporting sexual assault can have a profound influence on the psychological and physical recovery process.

The responsibility of attending to a sexual assault patient's immediate psychological and physical needs is shared by the examiner, the rape crisis center victim advocate, and other health care providers in hospital emergency departments and other places where victims present for sexual assault exams.

The patient is often the only witness (other than the perpetrator) to a crime of sexual assault. Evidence from sexual assault can sometimes be found in the environment in which the crime occurred and on the patient's clothing. Most often, the patient's body is the only evidence. When immediate and appropriate health care is received and an evidentiary exam is completed, the chances are dramatically increased that some type of physical evidence will be found which can be preserved.

New forensic techniques and a better understanding of injuries caused during an assault make it easier to identify, explain, and document injuries caused by forced sexual activity and can also explain a lack of injuries. In order for the examiner to provide a comprehensive and holistic sexual assault exam, he or she must be well-versed in both the needs of sexual assault patients and in forensic science.

This document is intended to provide guidance to health care providers to assist them in the following:

- Optimizing the psychological and physical health of a patient who reports sexual assault by ensuring appropriate and comprehensive treatment and follow-up; and,
- Collecting and preserving evidence for potential use by the criminal justice system.

## General Hospital Requirements

Every hospital in New York State is responsible for ensuring that all victims of rape or sexual assault who present at the hospital are provided with care that is comprehensive and consistent with current standards of practice. Hospitals must also ensure that forensic evidence is properly collected and preserved. Specifically, hospitals have the following responsibilities in meeting the specialized needs of patients who have been sexually assaulted:

- Maintain current protocols regarding the care of patients reporting sexual assault;

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- Ensure that there are trained and qualified staff available to perform sexual assault examinations at all times;
- Promote staff opportunities for continuing education;
- Designate a staff member to coordinate the required care of a victim of rape or sexual assault;
- Assure that each patient has access to a rape crisis counselor or victim advocate who can provide specialized victim assistance;
- Provide for the immediate availability of prophylaxis for sexually transmitted infection, HIV, hepatitis B, and prophylaxis against pregnancy resulting from sexual assault, as needed;
- Implement protocols that provide for the conduct of an evidentiary examination to collect and preserve evidence, in accordance with current forensic techniques and this *Protocol*; and,
- Develop and implement quality improvement activities to monitor performance.

### Sexual Assault Forensic Examiner (SAFE) Program Requirements

In New York State, some hospitals and other entities have developed programs known as Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) Programs to provide specialized care to sexual assault patients. Legislation enacted in 2000 in New York State known as the Sexual Assault Reform Act (SARA) mandates that the Department of Health formally designate interested hospitals as the sites of twenty-four hour SAFE programs. Hospitals interested in applying for designation as SAFE Programs must submit applications issued by the Department in January 2003 as part of the NYS SAFE Standards. The Department has developed standards for SAFE programs that were issued in January 2003 and updated in October 2004 as part of the Sexual Assault Reform Act and have been attached to this document as Appendix C.

The primary mission of a SAFE program is to provide immediate, compassionate, culturally sensitive and comprehensive forensic evaluation and treatment by specially trained sexual assault forensic examiners in a private, supportive setting to all victims of sexual assault, regardless of whether or not they choose to report to law enforcement. Specifically, the goals of the SAFE program are to:

- 1) Provide timely, compassionate, patient-centered care in a private setting that provides emotional support and reduces further trauma to the patient;
- 2) Provide quality medical care to the patient who reports sexual assault, including evaluation, treatment, referral and follow-up;
- 3) Ensure the quality of collection, documentation, preservation and custody of physical evidence by utilizing a trained and New York State Department of Health (DOH) certified sexual assault forensic examiner to perform the exam, which may lead to increased rates of identification, prosecution and conviction of sexual assault perpetrators;
- 4) Utilize an interdisciplinary approach by working with rape crisis centers and other service providers, law enforcement and prosecutors' offices to effectively meet

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- the needs of the sexual assault victim and the community;
- 5) Provide expert testimony when needed if the survivor chooses to report the crime to law enforcement; and,
  - 6) Improve and standardize data collection regarding the incidence of sexual assault victims seeking treatment in hospital emergency departments.

A comparison of general hospital and DOH-certified SAFE program responsibilities for the care and treatment of victims of sexual assault is included in Appendix D. Federal Emergency Medical Treatment and Active Labor Act requirements are included in Appendix E.

## Sexual Assault Forensic Examiners

Sexual assault examinations require the integration of specialized knowledge of genital anatomy and physiology, human sexual response, common sexual assault injuries, specialized health care treatment, forensic science, and criminal justice.

Because this knowledge transcends basic education in medical and nursing curricula, the New York State Department of Health recommends that each hospital ensures that patients reporting a sexual assault receive the care of a specially trained sexual assault forensic examiner.

In addition, examiners from any discipline providing sexual assault exams should take part in professional continuing education programs. These programs should specifically address medical forensic care for the patient reporting sexual assault.

The Sexual Assault Reform Act also mandates that the Department certify sexual assault forensic examiners for sexual assault examinations. Standards for sexual assault forensic examiners are included in Appendix C.

Didactic training for DOH-certified sexual assault forensic examiners must be provided through a training program that has been approved by the NYS Department of Health. Only training programs which demonstrate to the Department the ability to provide training that meets the minimum standards and requirements and enter into a formal agreement with the Department can provide training related to the Department's issuance of certificates of qualification. The Department has issued standards for sexual assault forensic examiner training programs (Appendix C).

Training of non-DOH certified SAFEs can continue to be obtained from training programs not certified by DOH (see Appendix F for training programs in New York State with those certified by DOH so indicated). Most current information may be obtained on the Department's web site at [www.health.state.ny.us](http://www.health.state.ny.us).

For a list of sexual assault forensic examiner services in New York State, refer to Appendix G. DOH certified SAFE programs are so indicated. See the Department's web site for most current status at [www.health.state.ny.us](http://www.health.state.ny.us).

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### Continuous Quality Improvement

Pursuant to 10 NYCRR 405.9 (c) and 405.19 (see Appendix H), all hospitals are required to establish protocols regarding the care of patients reporting sexual assault, and to maintain evidence. Such protocols must be followed for treatment of the sexual assault patient regardless of where they first present in the hospital. The hospital must designate a staff member to coordinate the required care of a victim of sexual assault. All emergency department (ED) managers should review their sexual assault protocols and procedures to ensure the following are in place:

- Around-the-clock availability of a specially trained sexual assault forensic examiner or other provider trained in the evaluation of sexual assault patients;
- A rape crisis advocate is contacted;
- A setting is provided where all health care needs can be met;
- Immediate availability of appropriate medications (including those for STIs, prophylaxis against pregnancy resulting from sexual assault, HIV prophylaxis, and hepatitis B prophylaxis);
- Necessary forensic equipment (for a list of suggested supplies and equipment, see Appendix I);
- Procedures for securing evidence and maintaining the chain of custody;
- Appropriate medical and forensic documentation;
- Appropriate and safe discharge is provided, including: medical transfer, as necessary; necessary and appropriate follow-up care/referrals; hospital contact person to assist with release or disposal of sexual offense evidence; suitable attire; transportation or other appropriate arrangements as necessary to meet patient needs; and,
- Follow-up services for medical and counseling referrals.

The hospital must develop and implement written policies and procedures establishing an internal quality improvement program to identify, evaluate, resolve, and monitor actual and potential problems in patient care. The following components are recommended for inclusion:

- 1) Chart audit performed periodically on a statistically significant number of sexual assault patient records. Sexual assault patient records and other appropriate information should be periodically reviewed to answer the following:
  - How long did the victim wait from arrival to exam commencement?
  - Were appropriately trained staff available to examine the patient?
  - Were necessary equipment and supplies available?
  - Was a rape crisis advocate called to attend the patient?
  - Did the patient receive appropriate medical treatment, including a recommendation of HIV prophylaxis in cases of significant risk exposure?
  - Was consent obtained from the patient?
  - Did the patient receive appropriate counseling about pregnancy prophylaxis, including the timeframe for effectiveness and the treatment?

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- Did the patient request and receive emergency contraception, unless medically contraindicated?
  - If the patient did not receive emergency contraception, is the reason documented, i.e. refused or already pregnant?
  - Did the patient receive treatment for STIs?
  - Did the patient choose to take advantage of all treatment offered? If not, why?
  - Was a referral made; if so, to whom?
  - Was forensic evidence collected and maintained in a manner which was consistent with laws, regulations and standards, including maintaining the chain of custody?
  - Was the patient provided with self-care information and plans for referral?
  - Was an appropriate psychological and medical follow-up plan developed for the patient?
  - Was the patient provided safe discharge?; and,
  - Was patient confidentiality maintained?
- 2) A system for developing and recommending corrective actions to resolve identified problems;
  - 3) A follow-up process to assure that recommendations and plans of correction are implemented and are effective; and,
  - 4) A system for resolving patient complaints.

It is recommended that emergency departments keep statistics on sexual assaults for community and public health assessment. Keeping accurate data on sexual assault patients and the services provided will assist the examiner and the facility in documenting the extent of the problem, determining the cost of service, identifying gaps in service, planning for growth and expansion, etc.

Data that could be collected include:

- The number of personnel who are certified as sexual assault forensic examiners;
- The number of sexual assault victims who present at the hospital for services;
- The response time of the sexual assault examiner from the time the call was made to the time the examiner arrived;
- The number of sexual assault exams performed by sexual assault forensic examiners;
- The number of sexual assault exams performed by personnel other than sexual assault forensic examiners;
- The number of inpatient admissions resulting from sexual assaults;
- The number of patients served by age, racial/ethnic status, and gender;
- Insurance payer status of victims;
- The number of patients accompanied by a rape crisis advocate;
- The number of patients who refused the services of a rape crisis advocate;
- The number of patients who took HIV prophylaxis;
- The number of patients who refused or were ineligible for HIV prophylaxis;

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- The number of patients who took prophylaxis against pregnancy resulting from sexual assault;
- The number of examinations where the patient chose to report sexual assault to law enforcement;
- The number of examinations where the patient declined to report sexual assault to law enforcement;
- The number of sexual assault evidence collection kits completed for sexual assault forensic examinations;
- The number of those kits released to law enforcement at the time of the exam;
- The number of those kits released to law enforcement after the exam was completed; and,
- The number of victims who refused to have evidence collected.

Note: Some of these data can be collected using SPARCS via consistent use of E-codes entered by ED staff.

## Law Enforcement Involvement

When law enforcement officers are the first contact a patient makes after a sexual assault, it is their responsibility to ensure the immediate safety and security of the patient, to obtain basic information about the assault and to transport the patient to a facility for immediate health care.

The responding law enforcement officers may conduct a preliminary, basic interview of the patient to obtain information that may be vital to the apprehension of the assailant. The officers may offer to transport the patient to a local emergency department. At the hospital, the responding officer should give the examiner any information about the assault that may assist in the examination and evidence collection procedures.

If a patient has not contacted law enforcement officers before arriving at a health care facility, she should be informed of the right to report the crime. **Hospital personnel should not call the police and identify a sexual assault patient, absent a legal obligation to do so, or absent a patient's consent. It is the adult patient's choice whether or not to involve law enforcement personnel.** If the patient so chooses, providers should assist her in contacting law enforcement officials.

Pursuant to Penal Law Section 265.25 (see Appendix J), the health care provider in charge of a patient has a legal obligation to report injuries including gunshot wounds or other injuries arising from the discharge of a firearm, or a wound which is likely to result in death and is actually or apparently inflicted by a knife, ice pick, or other sharp instrument.

Pursuant to Penal Law Section 265.26 (see Appendix J), every case of a burn injury or wound where the victim sustained second or third degree burns to five percent or more of the body, and/or any burns to the upper respiratory tract, or laryngeal

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edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death, shall be reported at once to the Office of Fire Prevention and Control.

Section 2803-d of the Public Health Law (see Appendix K) requires that health care providers report physical abuse, mistreatment, or neglect of a person receiving care or services in a residential health care facility. Reports of suspected physical abuse, mistreatment, or neglect must be made immediately by telephone and in writing within forty-eight hours to the New York State Department of Health (see Appendix L for patient care hotline numbers).

There is no medical or legal reason to have a law enforcement representative present during the health care exam or the evidence collection process. Doing so against a patient's wishes is a serious violation of the patient's rights.

## Intake

Acute care for patients reporting sexual assault is considered an emergency.

Although patients may not have immediately recognizable signs of physical injury, they usually suffer from emotional trauma.

Hospital emergency staff should immediately implement the following protocol upon arrival of the patient in the emergency department:

- Provide triage and assessment in a timely manner;
- Assign a trained and qualified individual, preferably a sexual assault forensic examiner, to perform the exam when the patient discloses that she has been sexually assaulted;
- Contact a rape crisis advocate at the same time that contact is made to the sexual assault forensic examiner;
- Be available for consultation and support of the individual providing the exam;
- Assist in obtaining necessary tests and medications; and,
- Assist in arranging referrals and follow-up services.

In addition, the individual performing the exam must have readily available access to medical/surgical back-up as needed, which, in addition to the emergency department, may include: general surgery, obstetrics/gynecology, pediatrics, urology and psychiatry.

To prevent others from hearing privileged and confidential information, a private location within the hospital should be utilized for intake and the preliminary and post-examination consultation, as well as the examination. Once in the exam room, the patient should not be left alone.

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### Rape Crisis Center Victim Advocates

The hospital must comply with Public Health Law 2805-i (1)(b) (see Appendix A) regarding contacting a rape crisis or victim advocate organization, if any, providing victim assistance to the geographic area served by the hospital, to establish the coordination of non-medical services to sexual offense victims who request such assistance. The best way to do this is to call the advocate and let the advocate present the services s/he offers to the patient in person. Hospital personnel should call the local Rape Crisis Center (see Appendix M) or the New York State Department of Health Rape Crisis Program at (518) 474-3664 for more information.

The New York State Department of Health has established standards for rape crisis centers in training rape victim advocates. Advocates who complete the training can, by law, provide confidential services to victims of sexual assault (see Subpart 69-5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, Appendix N).

The Rape Crisis Center victim advocates' primary focus is to provide calm, consistent support to the patient. While advocates do not provide health care or collect evidence, they enhance the efforts of health care staff through the provision of information regarding medical and legal options. They can provide the crisis intervention necessary when patients first arrive for treatment, assist patients in understanding the health care and evidence collection procedures, and counsel family members or friends who may accompany the patient. Rape crisis advocates often provide patient "comfort packs" and a change of clothing.

Advocates are the bridge to the care and services required following the hospital visit. They can assist the patient with the coordination of aftercare, including counseling, compensation, clothing, transportation, and follow-up medical appointments. They can provide advocacy and accompaniment through the legal system. Advocates are the direct link to the array of services and counseling available through the local Rape Crisis Center.

Hospitals can assure the highest level of comprehensive care and continuity of care beyond the ED visit by working with the Rape Crisis Center in their community. The patient is assured immediate crisis intervention and all necessary follow-up - medical, legal, and emotional - when a specially trained rape crisis advocate is part of the initial response team.